United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: January 19, 2005

TO : Robert H. Miller, Regional Director
Region 20

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice
560-7580-4067

SUBJECT: IBEW Local 6 (Signal Solutions)
Case 20-CD-736

This case was submitted for advice as to whether there is reasonable cause to believe that the Union violated Section 8(b)(4)(D) by threatening to picket the Employer with a jurisdictional, rather than area standards object. We conclude that, despite the Union's incomplete area standards investigation, there is insufficient evidence to establish a reasonable inference that the Union's object was jurisdictional.

FACTS

Signal Solutions is a low-voltage cabling contractor specializing in installing, maintaining and repairing voice and data cabling systems. Signal is signatory to a collective-bargaining agreement with CWA Local 9404, effective by its terms from March 1, 2002, through February 28, 2005.

In September 2003, John O'Rourke, business manager of Respondent IBEW Local 6 (Union), sent Signal a letter questioning whether Signal paid area standards and, to determine compliance, requested that Signal provide Local 6 with wage and fringe benefits rates for its San Francisco jobs. The letter further stated that any subsequent picketing and/or handbilling that the Union might engage in would not be for a representational objective, but only to call attention to the fact that Signal did not meet prevailing area standards.

Signal responded with a letter to the Union stating that its employees were represented by the CWA and that Signal had been paying prevailing wages and benefits for a number of years. The letter stated that O'Rourke could contact CWA Local 9404 President Carol Whichard with his questions, and provided her telephone number. Signal did not send its CWA agreement to Local 6 and did not state what Signal's wages and benefits amounted to.[1]

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[1] Since the execution of two agreements in 2000 and 2001, the CWA and IBEW international unions have attempted to resolve the unions' disputes over cable wiring job

It is undisputed that Local 6 did not contact CWA Local 9404 after receiving Signal's September 11, 2003 letter, and that it never asked the CWA for wage information or a copy of the Signal contract. The Union contends that it would have been futile to ask Local 9404 about Signal's wage and benefit package because of Local 9404's prior "hostility" towards Local 6. In support of this assertion, Local 6 provided to the Region letters from Local 9404, which responded to letters Local 6 had sent directly to various CWA-signatory employers asking for their wage and benefit package. Instead of providing the information to the Union, Local 9404 sent a standard letter to Local 6 advising it that any inquiry regarding the terms of Local 9404's contract with its signatory employer should be addressed to Local 9404 and not to the employer. None of these letters, however, indicated that Local 9404 would refuse to provide the information if Local 6 made the request directly to Local 9404. There is no evidence that the Union tested Local 9404 by subsequently requesting area standard evidence directly from the CWA local.

In October 2004, Signal was awarded the job of installing cable at a KFRC/Infinity Broadcasting Corp. project run by general contractor Ward Allen Emery Construction (WAE). Gary Hellmuth of WAE subsequently called Local 6 to find out if Signal was a "union" company. Kevin Tumminia of Local 6 responded that Signal was not an IBEW Local 6 signatory. Hellmuth interpreted this response to mean that Signal was a non-union contractor; he was unaware of Signal's relationship with the CWA. Hellmuth told Tumminia that if there was a problem with Signal, he needed some sort of documentation to present to his client. Tumminia promised to fax a letter shortly. Although at no time during the conversation did Tumminia threaten picketing on the job if Hellmuth used Signal, Hellmuth was concerned that any picketing would disrupt other employers in the building that also employ IBEW Local 6 employees.

On October 19, 2004, the Union faxed Hellmuth a cover letter from business manager O'Rourke addressed to WAE, along with O'Rourke's September 2003 letter to Signal. In the cover letter, O'Rourke stated that Signal's wages and conditions were "substandard." O'Rourke provided that in 2003, the Union had requested that Signal provide it with area standard information, but to no avail. O'Rourke stated that Local 6 did not want to enmesh neutrals such as WAE,

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classifications. The agreements contain a method for voluntary resolution of the jurisdictional disputes. Signal, however, is not a party to the unions' agreements.

and provided that "our picket signs will clearly indicate that our dispute is only with Signal Solutions Corporation and not anyone else." O'Rourke also referenced the "good and long-standing relationship" that Local 6 had with WAE and requested WAE's cooperation in protecting the standards of the employees Local 6 represents. O'Rourke requested that WAE "require Signal … to pay the prevailing rate for communication and systems work in San Francisco, for all work it performs in San Francisco." If Signal was unwilling to pay that rate, Local 6 requested that WAE "employ some other communication and systems contractor that will pay the prevailing rate." O'Rourke offered to send WAE "a list of electrical and communication and systems contractors who, Local 6 knows, do pay prevailing rates." At no point in this letter did Local 6 expressly request that WAE reassign the work to a Local 6-represented employer.

Hellmuth subsequently conferred with Phil Lerza of KFRC, who concluded that KFRC could not afford to have any problems on their tight schedule. After the meeting, Lerza notified Signal that it would not be doing the cabling work. According to Signal president Don Richey, Lerza stated that Local 6 had threatened a "possible labor action" if WAE used Signal, and Lerza referenced a "supposed failure on Signal Solutions to pay prevailing wages to it's [sic] employees." Ultimately, KFRC awarded the job to a Local 6 contractor.

ACTION

We conclude that, despite the Union's insubstantial area standards investigation, there is insufficient evidence to establish a reasonable inference that the Union's object was jurisdictional. Thus, in the absence of reasonable cause to believe that the Union violated Section 8(b)(4)(D), the Region should dismiss this charge.

Section 8(b)(4)(D) prohibits a union from threatening, coercing, or restraining an employer with the object of forcing the employer to assign work to employees it represents, rather than to employees represented by another labor organization. The Board may proceed with a Section 10(k) hearing in order to resolve a jurisdictional dispute proscribed by Section 8(b)(4)(D). However, a Section 10(k) hearing is appropriate only where there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and only in the absence of an agreement by the parties upon a method for voluntarily adjusting the dispute. Reasonable cause is predicated upon (1) a "genuine dispute," (2)

proscribed conduct under Section 8(b)(4)(i) or (ii), and (3) an objective to force the employer to reassign the work.[2]

We conclude that the evidence is insufficient to establish reasonable cause to believe that the Union evinced a jurisdictional object in violation of Section 8(b)(4)(D).[3] Initially, we agree with the Region that there is no direct record evidence that the Union has ever made a demand for Signal's cable work. Local 6's 2003 letter to Signal referenced its asserted area standards objective, without making a jurisdictional claim. During Local 6's telephone conversation with WAE in 2004, Union agent Tumminia stated that Signal was not a Local 6 contractor, again without making a jurisdictional claim. And O'Rourke's follow up letter carefully reiterated the Union's area standards claim, without making a direct plea for the reassignment of work. Moreover, KFRC apparently did not ascribe Local 6's motives to a jurisdictional object. In its telephone call to Signal removing them from the job, KFRC noted that Local 6 made an assertion of a "supposed failure on Signal Solutions to pay prevailing wages."

Furthermore, we cannot reasonably infer a jurisdictional object either from the Union's incomplete area standards investigation or from the IBEW's historical claims for cabling work in general. On the one hand, the Union's failure since 2003 to request Signal's wage and benefit rates from CWA Local 9404 raises doubts as to whether Local 6 conducted a good-faith area standards investigation. On the other hand, the record is silent as to the Union's possible objective, if not for area standards. As set forth above, the Union has never made an express demand for the work. Moreover, we conclude that Local 6 has made no implied demand. The history of the IBEW's dispute with the CWA over this type of work does not imply that Local 6 harbored a jurisdictional object with regard to Signal. The long-standing dispute establishes only that the IBEW harbors the generalized, long-term goal of getting as much cabling work as it can. This goal, in

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[2] This standard framework is laid out in, for instance, IBEW Local 640 (Stromberg-Carlson Communications, Inc.), 228 NLRB 1078, 1079 (1977), aff'd 580 F.2d 939 (9th Cir. 1978).

[3] Although the IBEW and the CWA Internationals have entered into voluntary dispute resolution mechanisms, Signal is not a party to the agreements. Thus, they do not constitute an agreed-upon method by all parties for voluntary resolution of the dispute sufficient to preclude further 8(b)(4)(D) inquiry. See IBEW Local 98 (Total Cabling Specialists), 337 NLRB 1275, 1276 (2002).

and of itself, is insufficient to establish that Local 6 harbored a jurisdictional claim with this employer, on this job.[4] And the fact that the Union has not specifically disclaimed the work does not establish that it has affirmatively claimed the work.

Accordingly, in the absence of record evidence, a trier of fact has no basis to infer a proscribed jurisdictional object -- a required aspect of the General Counsel's prima facie case -- over other possible explanations, including a possible recognitional or organizational object (which are irrelevant to a Section 8(b)(4)(D) violation[5]). In the absence of reasonable cause, the Region should dismiss this Section 8(b)(4)(D) charge, absent withdrawal.

B.J.K.

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[4] See Plumbers Local 290 (Streimer Sheet Metal Works), 323 NLRB 1101 n.3, 1112 (1997) (absent record evidence establishing claim for charging party-employer's work, union's abstract desire to obtain certain type of work for its members does not establish presumption of proscribed jurisdictional object). A contrary conclusion would unnecessarily require regions to hold Section 10(k) hearings in all cases where evidence of a union's jurisdictional object is unclear, but where the union or its International has previously made claims for similar work.

[5] Laborers Local 423 (Electrical Constructors), 183 NLRB 895, 898 (1970) (Board quashed 10(k) notice of hearing, despite obvious recognitional demand).